

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ALINA BOYDEN,

and

Case No.: 17-cv-264

SHANNON ANDREWS,

Plaintiffs

vs.

**STATE OF WISCONSIN DEPARTMENT
OF EMPLOYEE TRUST FUNDS,
STATE OF WISCONSIN GROUP INSURANCE BOARD,
ROBERT J. CONLIN, in his individual capacity and
his official capacity as Secretary of the Department of
Employee Trust Funds, BOARD OF REGENTS OF THE
UNIVERSITY OF WISCONSIN SYSTEM, RAYMOND W. CROSS,
in his individual capacity and his official capacity
as President of the University of Wisconsin System,
REBECCA M. BLANK, in her individual capacity
and her official capacity as Chancellor of the
University of Wisconsin-Madison, UNIVERSITY OF
WISCONSIN SCHOOL OF MEDICINE AND
PUBLIC HEALTH, ROBERT N. GOLDEN, M.D.,
in his individual capacity and his capacity as
Dean of the University of Wisconsin School of Medicine
and Public Health, and DEAN HEALTH PLAN, INC.,**

Defendants.

AMENDED COMPLAINT

Plaintiffs, Alina Boyden and Shannon Andrews, through their attorneys,
Hawks Quindel, S.C., by Nicholas E. Fairweather and Michael R. Godbe, the
American Civil Liberties Union of Wisconsin Foundation, by Laurence J. Dupuis, and

the American Civil Liberties Union Foundation, by John A. Knight, for their Complaint against Defendants, State of Wisconsin Department of Employee Trust Funds, State of Wisconsin Group Insurance Board, Robert J. Conlin, Secretary of the Department of Employee Trust Funds, Board of Regents of the University of Wisconsin System, Raymond W. Cross, President of the University of Wisconsin System, Rebecca M. Blank, Chancellor of the University of Wisconsin-Madison, University of Wisconsin School of Medicine and Public Health, Robert N. Golden, M.D., Dean of the University of Wisconsin School of Medicine and Public Health, and Dean Health Plan, Inc., state and allege as follows:

NATURE OF ACTION

1. This is a civil rights complaint for sex discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.* (“Title VII”), sex and transgender status discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, U.S. Const. amend. xiv, § 1 (“Equal Protection Clause”), brought pursuant to 42 U.S.C. § 1983, and sex discrimination in violation of the Patient Protection and Affordable Care Act § 1557, 42 U.S.C. § 18116 (“Section 1557”).

2. The Equal Protection Clause, Title VII, and Section 1557 all prohibit sex discrimination, including discrimination based on sex stereotypes, gender expression, gender transition, gender identity, and transgender status.

3. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the states from discriminating on the basis of

sex unless the discrimination is substantially related to an important government objective.

4. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the states from discriminating on the basis of transgender status unless the discrimination is narrowly tailored to achieve a compelling government objective and the least restrictive means for doing so, or substantially related to an important government objective.

5. Title VII bars sex discrimination with respect to an employee's "compensation, terms, conditions, or privileges of employment," including discrimination in the terms of an employer-sponsored health care plan. 42 U.S.C. § 2000e-2(a)(1).

6. Section 1557 of the Affordable Care Act bars sex discrimination in any health program or activity, any part of which receives, "federal financial assistance, including credits, subsidies, or contracts of insurance" in "any program or activity that is administered by an Executive Agency;" and in any entity established under Title I of the Affordable Care Act or its amendments. 42 U.S.C. § 18116(a); 45 C.F.R. § 92.4.

7. The Plaintiffs are two women who are transgender, meaning they were assigned male genders at birth, but identify as female. Both Plaintiffs are employed by the University of Wisconsin System, and both receive health insurance through their employment with the State.

8. The Wisconsin Department of Employee Trust Funds (“ETF”) and/or the Group Insurance Board (“GIB”) set the terms of Wisconsin state employees’ health insurance. ETF/GIB health plans exclude coverage of “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment.” ETF, Uniform Benefits, IV. EXCLUSIONS & LIMITATIONS, A.1.a. (pg. 4-44).¹

9. As a result of the above exclusion, Plaintiffs’ health insurance plans single out transgender employees for unequal treatment by categorically depriving them of all medical care for gender dysphoria, a serious medical condition codified in the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) and International Classification of Diseases (ICD-10).

10. Plaintiff, Alina Boyden (“Boyden”), is a graduate student and teaching assistant in the Department of Anthropology in the College of Letters and Science at the University of Wisconsin – Madison. As a result of the categorical and discriminatory exclusion of services and care related to gender transition, Ms. Boyden has been forced to forego medically necessary care for gender dysphoria.

11. Plaintiff, Shannon Andrews (“Andrews”), is an employee of the University of Wisconsin School of Medicine and Public Health (“School of Medicine”), a school within the University of Wisconsin System. As a result of the categorical and discriminatory exclusion of services and care related to gender transition, Dr.

¹ Prior to 2016, the exclusion was more ambiguous, prohibiting coverage of “[p]rocedures, services, and supplies related to sex transformation surgery and sex hormones related to such treatments.” Arguably, this would not exclude hormone therapy for gender dysphoria if it was not “related to” gender confirmation surgery.

Andrews has been forced to pay thousands of dollars out-of-pocket in order to obtain medically necessary care for gender dysphoria.

12. Plaintiffs bring this action against Defendants seeking declaratory and injunctive relief and damages caused by the discriminatory denial of medically necessary care.

JURISDICTION AND VENUE

13. This action arises under 42 U.S.C. § 1983, Title VII, 42 U.S.C. § 2000e *et seq*, and Section 1557, 42 U.S.C. § 18116.

14. This Court has jurisdiction over this matter pursuant to Article III of the United States Constitution; 28 U.S.C. §§ 1331, 1343; and 42 U.S.C. § 2000e-5(f)(3).

15. Declaratory relief is authorized by 28 U.S.C. § 2201 and 2202.

16. This Court has personal jurisdiction over Defendants because Defendants' principal offices are located in this District.

17. Venue is appropriate in the Western District of Wisconsin under 42 U.S.C. § 2000e-5(f)(3) and 28 U.S.C. § 1391 because the unlawful employment practices alleged herein occurred in this district, all parties reside in this District, and because a substantial part of the events giving rise to the claims occurred in this District.

PARTIES

18. Plaintiff Boyden is an adult resident of the State of Wisconsin. At all relevant times, Boyden is and was an employee of the University of Wisconsin –

Madison, and of the Board of Regents of the University of Wisconsin System, as that term is defined in Title VII, 42 U.S.C. § 2000e(f).

19. Plaintiff Andrews is an adult resident of the State of Wisconsin. At all relevant times, Andrews is and was an employee of the University of Wisconsin School of Medicine and Public Health, and of the Board of Regents of the University of Wisconsin System, as that term is defined in Title VII, 42 U.S.C. § 2000e(f).

20. Defendant, Wisconsin Department of Employee Trust Funds (“ETF”), is a state agency that oversees the State of Wisconsin Group Health Insurance for state employees and determines the requirements for health insurance plans offered to state employees. In establishing the scope of health insurance coverage for state employees, it acts as an agent for Wisconsin state employers, such as the University of Wisconsin System and the University of Wisconsin School of Medicine and Public Health, for purposes of determining components of state employees’ “compensation, terms, conditions, or privileges of employment.” ETF’s office is located at 801 West Badger Road, Madison, WI 53713-2526.

21. Defendant, State of Wisconsin Group Insurance Board (“GIB”), sets ETF policy and, with the Secretary, oversees the administration of the group health insurance plans for state employees. Six (6) of the eleven (11) members are appointed by the Governor. The remaining positions are ex-officio members occupied by the following officials or their designees: Governor, Attorney General, Secretary of the Department of Administration, Director of the Office of State Employment Relations, and the Commissioner of Insurance. The GIB meets approximately four (4) times per

year and has no physical location; it accepts correspondence at c/o Board Liaison, Department of Employee Trust Funds, Post Office Box 7931, Madison, WI 53707-7931. Like ETF, GIB acts as an agent for Wisconsin state employers, such as the University of Wisconsin System and the University of Wisconsin School of Medicine and Public Health, for purposes of determining components of state employees' "compensation, terms, conditions, or privileges of employment," including the scope of state employees' health insurance coverage.

22. Defendant, Robert J. Conlin, is the Secretary of the Department of Employee Trust Funds, and in that capacity exercises the administrative powers and duties of the department. Wis. Stat. § 15.05(1)(b). Mr. Conlin is sued in his individual capacity for damages and in his official capacity for injunctive relief.

23. Defendant, Board of Regents of the University of Wisconsin System, is the entity responsible for governance of the University of Wisconsin System, including the University of Wisconsin-Madison, and constitutes a body corporate per Wis. Stat. § 36.07. The Board of Regents of the University of Wisconsin System is located at 750 Highland Avenue, Madison, WI 53705.

24. Defendant, Raymond W. Cross, is the President of the University of Wisconsin System. As President, he is vested with the responsibility for administering the U.W. system as a whole. Wis. Stat. § 36.09(2). Mr. Cross is sued in his individual capacity for damages and his official capacity for injunctive relief.

25. Defendant, Rebecca M. Blank, is the Chancellor of the University of Wisconsin-Madison. As Chancellor, she has administrative authority, exercised

subject to the direction of the System President, over the University of Wisconsin-Madison. Wis. Stat. § 36.09(3). Chancellor Blank also has authority over certain aspects of the personnel system at the University of Wisconsin-Madison. Wis. Stat. § 36.115(3). Ms. Blank is sued in her individual capacity for damages and in her official capacity for injunctive relief.

26. Defendant, University of Wisconsin School of Medicine and Public Health (“School of Medicine”), is a school within the University of Wisconsin System. The School of Medicine is currently, and was at all relevant times, Dr. Andrews’ employer. The School of Medicine is located within the Health Sciences Learning Center at 750 Highland Avenue, Madison, WI 53705.

27. Defendant, Robert N. Golden, M.D., is the Dean of the School of Medicine. As Dean, he has administrative authority, subject to the direction of the President of the U.W. System and the Chancellor of the University of Wisconsin-Madison, over the School of Medicine.

28. Defendant, Dean Health Plan (“Dean”), is a health insurance administrator that offers insurance plans to Wisconsin state employees through ETF. It is part of SSM Health, one of the largest integrated health care systems in the country. Dean Health Plan is currently, and was at all relevant times, the health insurance provider for Plaintiff Alina Boyden. Dean is located at 1277 Deming Way, Madison, WI 53717. In administering health insurance coverage for state employees, Dean acts as an agent for Wisconsin state employers, such as the University of

Wisconsin System and the University of Wisconsin School of Medicine and Public Health.

FACTUAL ALLEGATIONS

29. Boyden and Andrews are women who are transgender. That means that they were assigned the male sex at birth, while their gender identities are female and they identify as women.

30. “Gender identity” is a well-established medical concept, referring to one’s sense of oneself as belonging to a particular gender. Typically, people who are designated female at birth based on their external anatomy identify as girls or women, and people who are designated male at birth identify as boys or men. For transgender individuals, however, the sense of one’s self – one’s gender identity – differs from the sex assigned to them at birth. Transgender men are men who were assigned “female” at birth, but have a male gender identity. Transgender women are women who were assigned “male” at birth, but have a female gender identity.

31. The medical diagnosis for the feeling of incongruence between one’s gender identity and one’s sex assigned at birth, and the resulting distress caused by that incongruence, is “gender dysphoria” (previously known as “gender identity disorder”). Gender dysphoria is a serious medical condition codified in the Diagnostic and Statistical Manual of Mental Disorders (DSM-V) and International Classification of Diseases (ICD-10). The criteria for diagnosing gender dysphoria are set forth in the DSM-V (302.85).

32. The widely accepted standards of care for treating gender dysphoria are published by the World Professional Association for Transgender Health (“WPATH”). The WPATH Standards of Care have been recognized as the authoritative standards of care by the leading medical organizations, the U.S. Department of Health and Human Services and federal courts.

33. Under the WPATH standards, medically necessary treatment for gender dysphoria may require medical steps to affirm one’s gender identity and help an individual transition from living as one gender to another. This treatment, often referred to as transition-related-care, may include hormone therapy, surgery (sometimes called “gender confirmation surgery” or “sex reassignment surgery”), and other medical services that align individuals’ bodies with their gender identities. The exact medical treatment varies based on the individualized needs of the person.

34. According to every major medical organization and the overwhelming consensus among medical experts, treatments for gender dysphoria, including surgical procedures, are effective, safe and medically necessary when clinically indicated to alleviate gender dysphoria.

35. In the past, public and private insurance companies excluded coverage for transition-related care based on the erroneous assumption that such treatments were cosmetic or experimental. Today, however, the medical consensus recognizes that such discriminatory exclusions of transition-related healthcare have no basis in medical science.

36. The State of Wisconsin denies transition-related health insurance coverage to its employees. In the summer of 2016, it appeared that this was going to change.

37. In mid-July 2016, ETF/GIB amended the state insurance plan policy to begin providing coverage for transition-related care beginning in January 2017. ETF/GIB ended the exclusion of coverage for transition-related care.

38. In August 2016, the Wisconsin Department of Justice (“DOJ”), asked GIB to reinstate the exclusion. The DOJ argued that the final rules were based on a misreading of the law, and that denying coverage for transition-related care is not discriminatory because it is never medically necessary. GIB initially rejected DOJ’s arguments.

39. The GIB continued to consider the DOJ’s arguments, and on December 30, 2016, (two days before the plans were to begin covering transition-related care), the GIB took action to reinstate the exclusion of health benefits and services related to gender reassignment as soon as four (4) contingencies were met:

- A court ruling or an administrative action that enjoins, rescinds or invalidates the rules set by the federal Department of Health and Human Services (HHS);
- Compliance with state law, Section 40.03 (6)(c);
- Renegotiation of contracts that maintain or reduce premium costs for the state; and

- A final opinion of the Wisconsin Department of Justice that the action taken does not constitute a breach of the Board's fiduciary duties.

40. On January 30, 2017, the GIB found that the four (4) contingencies had been met and reinstated the ban effective February 1, 2017.

41. As a result of the ETF/GIB's exclusion of coverage for "procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment," Boyden and Andrews have been denied coverage for medically necessary treatments for gender dysphoria that were prescribed to them by qualified medical providers in accordance with the WPATH Standards of Care. Andrews has been forced to pay out-of-pocket for medically necessary Gender Confirmation Surgery ("GCS") and Boyden has had to entirely forgo medically necessary GCS.

Alina Boyden

42. Ms. Boyden began her gender transition to female while in college in California in 2002 and 2003. At that time, she was diagnosed with gender identity disorder. She was prescribed spironolactone and estradiol to treat the dysphoria and has taken those medications ever since. Her driver's license (from North Carolina) identifies her as female. All of her colleagues and classmates at UW know her as a woman and she has disclosed to only a few of those people that she is transgender.

43. In 2013, Ms. Boyden started graduate school in Anthropology at the University of Wisconsin – Madison. She completed her master's degree in May 2015 and is currently working on her Ph.D. She has been employed by the University as a

teaching assistant, instructing undergraduates, for the past three (3) years. As an employee of the University, she is eligible for health insurance coverage through ETF.

44. Ms. Boyden has received several fellowships and scholarships to support her work, including support from the federal Foreign Language and Areas Studies Program, from the University of Wisconsin and from the LGBT Campus Center. She has also served on faculty shared governance committees.

45. On or about December 1, 2015, Ms. Boyden filed a complaint with the Equal Employment Opportunity Commission (“EEOC”) against the University of Wisconsin – Madison for discriminating against her on the basis of gender nonconformity or gender identity by offering health insurance that excludes coverage for transgender individuals. On or about March 10, 2016, Ms. Boyden amended her EEOC complaint to add ETF as a respondent. On or about October 7, 2016, Ms. Boyden amended her EEOC complaint again to add her health insurance administrator, Dean Health Plan, Inc. (“Dean”), as a respondent.

46. On or about May 17, 2016, Ms. Boyden requested pre-approval for surgical treatment of gender dysphoria, or GCS (also known as Sex Reassignment Surgery – “SRS”), from Dean. She requested surgery because of the dysphoria she continues to experience due to her body’s failure to fully conform to her female gender identity and to reduce the risks associated with continuing to take high dosages of hormone therapy.

47. On May 19, 2016, Ms. Boyden’s primary care physician, Dr. Bryan J. Webster, wrote a letter in support of Ms. Boyden’s desire to undergo GCS. Dr.

Webster noted that he had been working with Ms. Boyden for over two (2) years and prescribing medications to treat her gender dysphoria; however, he noted that high dosages of medication had been necessary to keep Ms. Boyden's testosterone levels low, and that even despite this, her testosterone levels remained high. Dr. Webster recommended GCS as "the best way for her to keep her testosterone levels at goal."

48. On May 20, 2016, Dean denied Ms. Boyden's request for coverage related to GCS.

49. On June 6, 2016, Ms. Boyden initiated a grievance with Dean and requested that Dean reconsider its denial of coverage for gender reassignment surgery.

50. On July 8, 2016, Dean upheld its denial of coverage, citing the following exclusion from Plan Benefits: "Procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment."

51. Approximately one (1) week later, in mid-July 2016, ETF/GIB amended the state insurance plan policy to begin providing coverage for transition-related care starting in January 2017, as described above.

52. In response to this change in policy, Ms. Boyden again requested pre-approval for GCS from Dean on or about October 20, 2016 (shortly after her new health insurance plan became effective). Dean denied Ms. Boyden's request, stating that the change did not become effective until January 1, 2017. Ms. Boyden instructed her general health care provider to put in a request for the surgery to Dean as soon after January 1, 2017 as possible.

53. On January 3, 2017, Ms. Boyden's provider submitted a request to Dean for pre-approval of GCS for Ms. Boyden.

54. In a letter dated January 10, 2017, Dean denied Ms. Boyden's request for pre-approval of GCS. Ms. Boyden did not receive Dean's letter until the third (3rd) week of January. Shortly after receiving Dean's letter, Ms. Boyden requested a grievance hearing and asked both of the medical professionals she was seeing to request peer-to-peer reviews of Dean's decision.

55. On February 15, 2017, Ms. Boyden met in person with Dean representatives to discuss her grievance.

56. In a letter dated February 21, 2017, Dean upheld its denial of Ms. Boyden's request for coverage, citing the reinstatement of the ban, Dean Health Plan Medical Policy MP9469, and an external review of Ms. Boyden's case conducted by a Board Certified Plastic Surgeon.

57. Although Ms. Boyden's health care providers have referred her to a surgeon for medically necessary GCS, Ms. Boyden does not have sufficient funds to pay for GCS out-of-pocket and has thus not been able to obtain GCS as of this filing.

58. On March 31, 2017, Ms. Boyden, through her attorneys, requested a right to sue letter from the EEOC. On April 27, 2017, Ms. Boyden received Notice of Right to Sue UW-Madison, ETF/GIB, and Dean. **Exhibit 1.**

Shannon Andrews

59. Dr. Andrews first began identifying as female at approximately age five (5). However, due to the hostile reactions of classmates on finding out that she

presented as a girl outside of school, Dr. Andrews determined that she needed to keep her gender identity a secret in order to survive.

60. Dr. Andrews came out a second time to her mother during middle school in 1994, but again decided to continue living as a male due to lack of knowledge regarding what it meant to be transgender on the part of her family and available health care professionals.

61. Dr. Andrews first sought out therapy for her gender dysphoria in 2007, while she was earning her Ph.D. in molecular biology from Princeton University. She found, however, that her healthcare plan through the University did not cover transition-related medical care for transgender persons.

62. Dr. Andrews continued to suppress her female gender identity, at great personal and emotional cost. She became extremely depressed around the beginning of the summer of 2011, and made several attempts to commit suicide.

63. In the fall of 2012, Dr. Andrews suffered an emotional breakdown and lost her job as a result. She determined then that she needed to transition to living as a woman to survive. She began to undergo electrolysis (permanent hair removal) in order to feminize her appearance, but was forced to delay further medical procedures due to her unemployment and lack of health insurance coverage. Dr. Andrews found employment and began taking hormones in October 2013.

64. Dr. Andrews began her current position as a research assistant in the Clinical Sciences Center, Carbone Cancer Center, School of Medicine, in March of 2014. At the time, she presented as female outside of work.

65. She waited until June of 2014, after her first positive employment evaluation, to come out as transgender to her co-workers and begin presenting as female at work.

66. Dr. Andrews has legally changed her first name to fit her female identity, and has had her name and gender marker changed on her California birth certificate, her driver's license, her passport, her school records, her Social Security records and her employment documents.

67. Dr. Andrews continued to experience dysphoria despite the treatment she had been provided and so she sought additional treatment from Dr. Christine McGinn of the Papillon Gender Wellness Center in New Hope, Pennsylvania, in the summer of 2015.

68. In June of 2015, Dr. Andrews' therapist, Nyle Biondi, M.S., sent a letter to Dr. McGinn in support of Dr. Andrews' need for GCS. Mr. Biondi noted that Dr. Andrews had been in his care since September 2012 and that her request for GCS was "an appropriate next step of transition and is in accordance with the WPATH standards of care," and that Dr. Andrews had, "the necessary information from which to make this decision and the cognitive ability to do so."

69. In July of 2015, Dr. Susan M. Gill, a licensed psychologist, sent a letter to Dr. McGinn recommending Dr. Andrews for GCS. As part of her evaluation, Dr. Gill conducted a formal clinical interview, consulted with Mr. Biondi, and conducted standardized psychological testing. Dr. Gill found that Dr. Andrews met the criteria

for adult Gender Identity Disorder, as well as the WPATH eligibility and readiness criteria for GCS.

70. On October 27, 2015, Dr. Andrews underwent genital reconstruction surgery to treat her gender dysphoria at Lower Bucks Hospital in Bristol, Pennsylvania. The surgery was performed by Dr. Christine McGinn.

71. In late September 2015, prior to the surgery, Dr. Andrews paid \$14,750.00 to the Papillon Center, and paid \$1,350.00 to Liberty Anesthesia Associates, P.C. On the morning of the surgery, she paid the remaining \$4,900.00 in hospital fees directly to Lower Bucks Hospital.

72. Dr. Andrews submitted a claim for coverage of her GCS to her health insurance administrator, Wisconsin Physicians Service Insurance Corporation d/b/a WPS Health Solutions (“WPS”), in two (2) parts.

73. On or about February 6, 2016, she filed a claim for the \$14,750.00 payment directly with WPS.

74. On or about February 26, 2016, WPS denied the claim, stating “This service/supply is not covered based upon an exclusion in the plan.” Dr. Andrews submitted a grievance to WPS regarding the denial of this claim on April 3, 2016.

75. Believing it would be simpler, Dr. Andrews decided to have the hospital submit her remaining claims for hospital fees and anesthesia, and on or about March 22, 2016, Lower Bucks Hospital submitted a claim for the remaining services to WPS.²

² In addition to the \$14,750.00 that Dr. Andrews paid directly to the Papillon Gender Wellness Center and for which she filed a separate claim, Dr. Andrews paid \$1,350.00 for anesthesia and \$4,900.00 for hospital services. Lower Bucks Hospital

76. On April 6, 2016, WPS denied Dr. Andrews' second claim, citing in the Remarks: "w85 – ANSI Code – 11: The diagnosis is inconsistent with the procedure. Gender conflict; the patient's gender and Principal procedure code, on the claim are not permissible. Sources for procedure code changes include: AMA/AAOS/ACS/ACOG/ACR/CPT/CCI/Medicare/CMS." Dr. Andrews did not file a grievance to appeal the second denial.

77. On May 4, 2016, Dr. Andrews met with representatives from WPS to discuss her grievance and appeal the denial of her first claim.

78. The following day, May 5, 2016, WPS upheld the denial of Dr. Andrews' first claim.

79. On June 2, 2016, Dr. Andrews submitted a Complaint to ETF.

80. On or about July 26, 2016, Dr. Andrews submitted a Complaint against ETF and GIB to the EEOC, which she subsequently amended to also include WPS and the School of Medicine as defendants.

81. On March 31, 2017, Dr. Andrews, through her attorneys, requested a right to sue letter from the EEOC. Dr. Andrews received Notices of Right to Sue ETF/GIB and the School of Medicine on April 27, 2017. **Exhibit 2, 3.**

made the second claim to WPS for \$52,467.95. Dr. Andrews does not know why Lower Bucks made a claim to WPS for more than what it charged Dr. Andrews.

PLAINTIFFS' FIRST CAUSE OF ACTION
VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH
AMENDMENT OF THE UNITED STATES CONSTITUTION
U.S. CONST. AMEND. XIV & 42 U.S.C. § 1983 BASED ON SEX
Against Defendants, Conlin, Cross, Blank and Golden,
in their individual and official capacities

82. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

83. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the states and state actors from discriminating against individuals based on their sex.

84. Discrimination on the basis of transgender status, gender transition, or gender nonconformity is discrimination on the basis of sex.

85. By refusing to cover “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment,” Defendants are engaging in impermissible sex-based discrimination, in violation of the Equal Protection Clause of the Fourteenth Amendment.

86. Discrimination on the basis of sex is a quasi-suspect class and demands a heightened level of scrutiny.

87. As a direct and proximate result of the discrimination described above, Plaintiffs have suffered injury and damages, *inter alia*, financial damages, mental pain and suffering, humiliation, mental anguish and emotional distress. Without injunctive relief from Defendants’ discriminatory exclusion of coverage for transition-related care, Plaintiffs will continue to suffer irreparable harm in the future.

PLAINTIFFS' SECOND CAUSE OF ACTION
VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH
AMENDMENT OF THE UNITED STATES CONSTITUTION
U.S. CONST. AMEND. XIV & 42 U.S.C. § 1983
BASED ON TRANSGENDER STATUS
Against Defendants, Conlin, Cross, Blank and Golden,
in their individual and official capacities

88. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

89. The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the states from discriminating against individuals based on their transgender status.

90. By refusing to cover “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment,” Defendants are engaging in impermissible discrimination on the basis of transgender status, in violation of the Equal Protection Clause of the Fourteenth Amendment.

91. Discrimination on the basis of transgender status is suspect and demands a heightened level of scrutiny under the United States Constitution. Defendants’ actions purposefully single out a minority group (transgender people) that historically have suffered discriminatory treatment and been relegated to a position of political powerlessness solely on the basis of stereotypes and myths regarding their transgender status—a characteristic that bears no relation to their ability to contribute to society and is immutable in that it is central to their core identity.

92. As a direct and proximate result of the discrimination described above, Plaintiffs have suffered injury and damages, *inter alia*, financial damages, mental pain and suffering, humiliation, mental anguish and emotional distress. Without injunctive relief from Defendants' discriminatory exclusion of coverage for transition-related care, Plaintiffs will continue to suffer irreparable harm in the future.

PLAINTIFFS' THIRD CAUSE OF ACTION
VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964
42 U.S.C. § 2000e-2(a)(1)
Against Defendants, Board of Regents, School of Medicine,
ETF, GIB, and Dean

93. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

94. Title VII provides that employers may not "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's...sex." 42 U.S.C. § 2000e-2(a)(1).

95. UW-Madison is an employer as that term is defined in Title VII, 42 U.S.C. § 2000e-(b). In establishing the scope of insurance coverage and administering that coverage, ETF, GIB, and Dean are agents of UW-Madison under Title VII.

96. Boyden and Andrews are "employees" of UW-Madison as that term is defined in Title VII, 42 U.S.C. § 2000e(f). Andrews is also an employee of the School of Medicine as that term is defined in Title VII, 42 U.S.C. § 2000e(f).

97. An employer-sponsored health plan is part of the "compensation, terms, conditions or privileges of employment." 42 U.S.C. § 2000e-2(a)(1).

98. Discrimination on the basis of transgender status, gender transition or gender nonconformity is discrimination on the basis of “sex” under Title VII.

99. By limiting the available health care plans to those that exclude coverage of “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment,” Plaintiffs’ state-employers have drawn a classification that discriminates based on transgender status, gender transition, and gender nonconformity.

100. Because the only individuals who require medically necessary care to treat gender dysphoria are transgender individuals, denying coverage for such health care constitutes discrimination based on transgender status. As a result of the exclusion in ETF/GIB health care plans, non-transgender employees receive coverage for all of their medically necessary healthcare, but transgender individuals do not.

101. Because medical transition from one sex to another inherently violates gender stereotypes, denying coverage for such health care constitutes impermissible discrimination based on gender nonconformity.

102. By excluding all coverage of “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment” from the only available health plans it provides to employees, Defendants have unlawfully discriminated against Boyden and Andrews – and continue to unlawfully discriminate against them – based on their sex in violation of Title VII.

PLAINTIFFS' FOURTH CAUSE OF ACTION
VIOLATION OF THE PATIENT PROTECTION AND AFFORDABLE CARE
ACT, 42 U.S.C. § 18116
Against ETF and GIB

103. Plaintiffs incorporate and re-allege each and every allegation contained in the preceding paragraphs of this Complaint.

104. Section 1557 of the Patient Protection and Affordable Care Act § 1557, 42 U.S.C. § 18116 (“Section 1557”), provides that “an individual shall not, on the ground prohibited under...title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.)” – which prohibits discrimination “on the basis of sex” – “be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health program or activity, any part of which is receiving Federal financial assistance.”

105. The Department of Health and Human Services (“HHS”) issued final regulations pertaining to Section 1557 on May 18, 2016. 81 Federal Register 31376 (May 18, 2016).

106. The regulations apply to “covered entities” and prohibit discrimination on the basis of gender identity. 45 C.F.R. §§ 92.4, 92.207.

107. ETF and GIB are “covered entities” under 45 C.F.R. § 92.4.³

³ On June 22, 2016, ETF staff issued a memorandum to the GIB. The memorandum stated that ETF’s Office of Legal Services concluded that ETF was a “covered entity” because 1) ETF administers health insurance coverage with respect to ETF’s self-insured plans, which comes under the definition of a “health program or activity” as defined by the regulations; 2) with respect to ETF’s self-insured plans, ETF accepts Medicare Part D subsidies, which constituted “federal financial assistance through HHS” as defined by the regulations; and 3) with respect to ETF’s insured plans, ETF is also considered an entity that “administers a health program or activity” because it is principally engaged in administering health insurance coverage. ETF Correspondence Memorandum to GIB, Guidelines Contract and Uniform Benefits Changes for 2017 (<http://etf.wi.gov/boards/agenda-items-2016/gib0712/item3a.pdf>).

108. Discrimination on the basis of gender identity, transgender status, gender transition, or gender nonconformity is discrimination on the basis of “sex” under Section 1557.

109. By excluding all coverage of “procedures, services, and supplies related to surgery and sex hormones associated with gender reassignment” from the only available health plans it provides to employees, ETF/GIB have unlawfully discriminated against Boyden and Andrews – and continue to unlawfully discriminate against them – based on their sex in violation of Section 1557.

WHEREFORE, Plaintiffs demand Judgment against Defendants, awarding:

A. Declaratory relief, including, but not limited to, a declaration that Defendants violated the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution, Title VII, and the Patient Protection and Affordable Care Act;

B. Injunctive relief ordering Defendants to provide health insurance coverage for Plaintiffs’ transition-related care, including gender confirmation surgery;

C. Compensatory and consequential damages in an amount to be determined at trial;

D. Punitive damages for violation of Title VII;

E. Pre- and post-judgment interest;

F. An award of Plaintiff’s reasonable attorneys’ fees, reasonable expert fees, and costs incurred in this action pursuant to 42 U.S.C. § 1988; and

G. Such other relief as the Court deems just and appropriate.

Dated this 16th day of June, 2017.

HAWKS QUINDEL, S.C.

Counsel for Plaintiffs,

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Madison, Wisconsin 53701-2155
Telephone: (608) 257-0040
Facsimile: (608) 256-0236

**AMERICAN CIVIL LIBERTIES UNION OF
WISCONSIN FOUNDATION**

Counsel for Plaintiffs,

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ACLU of Wisconsin Foundation
207 East Buffalo Street, Suite 325
Milwaukee, Wisconsin 53202
Telephone: (414) 272-4032

**AMERICAN CIVIL LIBERTIES UNION
FOUNDATION**

Counsel for Plaintiffs,

By: /s/ John A. Knight
John A. Knight
Email: jaknight@aclu.org
ACLU Foundation
Lesbian Gay Bisexual Transgender Project
180 North Michigan Avenue, Suite 2300
Chicago, Illinois 60601
Telephone: (312) 201-9740

Exhibit 1



U.S. Department of Justice
Civil Rights Division

NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

CERTIFIED MAIL

7014 3490 0000 6312 0686

950 Pennsylvania Avenue, N.W.

Karen Ferguson, EMP, PHB, Room 4701

Washington, DC 20530

April 27, 2017

Ms. Alina Boyden
c/o John A. Knight, Esquire
ACLU
180 North Michigan Ave.
Suite 2300
Chicago, IL 60601-1287

Re: EEOC Charge Against University of Wisconsin, Madison, et al.
No. 443201600291

Dear Ms. Boyden:

Because you filed the above charge with the Equal Employment Opportunity Commission, and more than 180 days have elapsed since the date the Commission assumed jurisdiction over the charge, and no suit based thereon has been filed by this Department, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., against the above-named respondent.

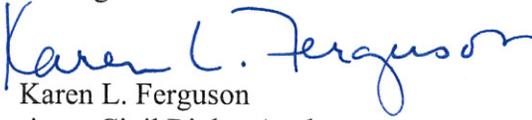
If you choose to commence a civil action, such suit must be filed in the appropriate Court within 90 days of your receipt of this Notice.

The investigative file pertaining to your case is located in the EEOC Milwaukee District Office, Milwaukee, WI.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your case is meritorious.

Sincerely,

T. E. Wheeler, II
Acting Assistant Attorney General
Civil Rights Division

by 
Karen L. Ferguson
Supervisory Civil Rights Analyst
Employment Litigation Section

cc: Milwaukee District Office, EEOC
University of Wisconsin, Madison, et al.

Exhibit 2



U.S. Department of Justice
Civil Rights Division

NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

CERTIFIED MAIL

7014 3490 0000 6312 0679

950 Pennsylvania Avenue, N.W.

Karen Ferguson, EMP, PHB, Room 4701

Washington, DC 20530

April 27, 2017

Ms. Shannon Andrews
c/o John A. Knight, Esquire
ACLU
180 North Michigan Ave.
Suite 2300
Chicago, IL 60601-1287

Re: EEOC Charge Against University of Wisconsin, Madison, et al.
No. 443201601428

Dear Ms. Andrews:

Because you filed the above charge with the Equal Employment Opportunity Commission, and more than 180 days have elapsed since the date the Commission assumed jurisdiction over the charge, and no suit based thereon has been filed by this Department, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate Court within 90 days of your receipt of this Notice.

The investigative file pertaining to your case is located in the EEOC Milwaukee District Office, Milwaukee, WI.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your case is meritorious.

Sincerely,

T. E. Wheeler, II
Acting Assistant Attorney General
Civil Rights Division

by

Handwritten signature of Karen L. Ferguson in blue ink.

Karen L. Ferguson
Supervisory Civil Rights Analyst
Employment Litigation Section

cc: Milwaukee District Office, EEOC
University of Wisconsin, Madison, et al.

Exhibit 3



U.S. Department of Justice
Civil Rights Division

NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

CERTIFIED MAIL

7014 3490 0000 6312 0679

950 Pennsylvania Avenue, N.W.
Karen Ferguson, EMP, PHB, Room 4701
Washington, DC 20530

April 27, 2017

Ms. Shannon Andrews
c/o John A. Knight, Esquire
ACLU
180 North Michigan Ave.
Suite 2300
Chicago, IL 60601-1287

Re: EEOC Charge Against University of Wisconsin, Madison, et al.
No. 443201601407

Dear Ms. Andrews:

Because you filed the above charge with the Equal Employment Opportunity Commission, and more than 180 days have elapsed since the date the Commission assumed jurisdiction over the charge, and no suit based thereon has been filed by this Department, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., against the above-named respondent.

If you choose to commence a civil action, such suit must be filed in the appropriate Court within 90 days of your receipt of this Notice.

The investigative file pertaining to your case is located in the EEOC Milwaukee District Office, Milwaukee, WI.

This Notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your case is meritorious.

Sincerely,

T. E. Wheeler, II
Acting Assistant Attorney General
Civil Rights Division

by

Handwritten signature of Karen L. Ferguson in blue ink.

Karen L. Ferguson
Supervisory Civil Rights Analyst
Employment Litigation Section

cc: Milwaukee District Office, EEOC
University of Wisconsin, Madison, et al.